

I trust when the House of Commons comes to consider the decision in this case, it will be appreciated that there is no desire to impeach its privileges in any way. Your Lordships are motivated by a desire to carry out the intentions of Parliament in enacting legislation and have no intention or desire to question the processes by which such legislation was enacted or of criticising anything said by anyone in Parliament in the course of enacting it. The purpose is to give effect to, not thwart, the intentions of Parliament.

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REGINA

v.

SHEPHERD

HOUSE OF LORDS

LORD GRIFFITHS, LORD EMSLIE,

LORD ROSKILL, LORD ACKNER,

LORD LOWRY

16 DECEMBER 1992

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EVIDENCE: Computer evidence - Whether admissible without calling computer expert - Police & Criminal Evidence Act 1984 s. 69(1)(b) - How burden to be discharged.

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The appellant was arrested at her home and goods worth £78.36 from Marks & Spencer were found in her car. The store detective employed by Marks & Spencer gave evidence that there was no trace on the till rolls, from the said store on the date in question, of the Unique Product Code's for the clothing found in the appellant's car. She also said that there was no record on any of the till rolls of an item of food costing £12.57, the price of the beef found in the appellant's car nor was there any group of prices matching the items of food found in the car. The till rolls were admitted in evidence and the appellant was duly convicted.

The appellant's appeal to the Court of Appeal was dismissed but that Court requested determination by the House on whether a party seeking to rely on computer evidence can discharge the burden under s. 69(1)(b) of the Police & Criminal Evidence Act 1984 without calling a computer expert and if so how.

Held:

Section 69(1) of the Police and Criminal Evidence Act 1984 can be satisfied by the oral evidence of a person familiar with the operation of the computer who can give evidence of its reliability and such a person need not be a computer expert.

[Appeal dismissed].

Cases referred to:

R v. Minors [1989] 1 WLR 441 (ovrl)

R v. Spiby [1990] 91 CAR 186 (refd)

R v. Neville [1991] CLR 288 (refd)

Reg v. Ewing [1983] QB. 1039 (refd)

Legislation referred to:

Criminal Evidence Act 1965, s. 1

Criminal Justice Act 1988, s. 24

Police and Criminal Evidence Act 1984, ss. 68 & 69

JUDGMENT**Lord Griffiths:**

My Lords,

The Court of Appeal has certified the following point of law of general public importance:

Whether a party seeking to rely on computer evidence can discharge the burden under s. 69(1)(b) of the Police and Criminal Evidence Act 1984 without calling a computer expert, and if so how?

The point of law falls to be considered against the following background of fact. The appellant was arrested at her home at Maple Cross, Rickmansworth at about 5.30 pm on 17 March 1989. In her car were goods from Marks & Spencers worth £78.36. The goods consisted of various items of food, including a joint of beef priced at £12.57 and five items of clothing. The appellant had no receipt. In an initial interview on 17 March 1989 she declined to answer questions. She was interviewed again on 29 April 1989 when she said that she had bought the goods at Marks & Spencers at St Alban's. When she returned to her car the bags had split so she transferred the shopping to a bag of her own. She said she never kept receipts and denied stealing the goods.

The principal evidence for the prosecution was given by a store detective employed by Marks & Spencers at their St Alban's branch. She said that at 10 am on the morning of 18 March she removed all the till rolls from the tills and recovered a further two till rolls from a cupboard which bore the date 17 March. She explained that the tills were connected to a central computer which fed in the date, time, customer number and till number on each of the till rolls.

She further explained that each item of clothing has upon it a seven figure numbered label known as a Unique Product Code or U.P.C. The U.P.C. numbers are unique to clothing of a particular type, size and colour. The till operator punches in the U.P.C. number on the till which then registers the appropriate price.

a In the case of food each item of food has a price upon it and the operator punches in the price of each item on the till. She said that they had had no trouble with the operation of the central computer.

b She carried out an examination of all the till rolls which she had recovered from the tills which would have been those in use on 17 March and stamped as such by the central computer and she also examined the two till rolls also stamped and dated 17 March which had been placed in the cupboard where all used till rolls were kept. She thus examined all the till rolls in use on 17 March.

c She said that there was no trace on the till rolls of the U.P.C.s for the clothing found in the appellant's car. She said there was no record on any of the till rolls of an item of food costing £12.57, the price of the beef. Nor was there any group of prices matching the items of food found in the car.

d It was quite apparent from the store detective's evidence that she was thoroughly familiar with the operation of these tills and of the computer, albeit she did not pretend to any technical understanding of the operation of the computer.

e The appellant did not herself give evidence and no evidence was called on her behalf. The jury convicted her. If the till rolls were properly admitted in evidence this is hardly surprising for they provided the most powerful evidence of guilt.

f It is however submitted that the till rolls should not have been admitted in evidence because the store detective's evidence did not satisfy the provisions of s. 69 of the Police and Criminal Evidence Act 1984 which provides:

g (1) In any proceedings, a statement in a document produced by a computer shall not be admissible as evidence of any fact stated therein unless it is shown -

h (a) that there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;

i (b) that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents; and

- (c) that any relevant conditions specified in rules of court under subsection (2) below are satisfied.
- (2) Provision may be made by rules of court requiring that in any proceedings where it is desired to give a statement in evidence by virtue of this section such information concerning the statement as may be required by the rules shall be provided in such form and at such time as may be so required.

No rules have yet been made under subsection (2) but it is also necessary to note part II of Schedule 3:

Part II

Provisions Supplementary to Section 69

- 8. In any proceedings where it is desired to give a statement in evidence in accordance with s. 69 above, a certificate -
 - (a) identifying the document containing the statement and describing the manner in which it was produced;
 - (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
 - (c) dealing with any of the matters mentioned in subsection (1) of s. 69 above; and
 - (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the computer,

shall be evidence of anything stated in it; and for the purposes of this paragraph it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.
- 9. Notwithstanding paragraph 8 above, a court may require oral evidence to be given of anything of which evidence could be given by a certificate under that paragraph.

The object of s. 69 of the Act is clear enough. It requires anyone who wishes to introduce computer evidence to produce evidence that will establish that it is safe to rely on the documents produced by the computer. This is an affirmative duty emphatically stated:

A statement in a document produced by a computer shall not be admissible as evidence of any fact stated therein **unless it is shown.**

- a Such a duty cannot be discharged without evidence by the application of the presumption that the computer is working correctly expressed in the maxim *omnia praesumuntur rite esse acta* as appears to be suggested in some of the cases. Nor does it make any difference whether the computer document has been produced with or without the input of information provided by the human mind and thus may or may not be hearsay. If the document produced by the computer is hearsay it will be necessary to comply with the provisions of s. 24 of the Criminal Justice Act 1988, the successor to s. 68 of the Police and Criminal Evidence Act 1984, before the document can be admitted as evidence and it will also be necessary to comply with the provisions of s. 69 of the Police and Criminal Evidence Act 1984. I see no warrant for an interpretation of the Act which limits the operation of s. 69 to cases that fall within s. 68 of the Act or s. 24 of the Criminal Justice Act 1988. This however was the construction of the Act adopted by the Court of Appeal in *R. v. Minors* [1989] 1 WLR 441 and which has been followed in a number of subsequent cases most notably *R. v. Spiby* [1990] 91 CAR 186 and *R. v. Neville* [1991] CLR 288.
- c In *R. v. Minors* at p. 446 it is stated in the judgment:

... to the extent to which a computer is merely used to perform functions of calculation, no question of hearsay is involved, and the requirements of s. 68 and 69 do not apply: *Reg. v. Wood* [1982] 76 CAR 23 and *Sophocleous v. Ringer* [1988] RTR 52.
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- g I do not think that these authorities give any support to the proposition that s. 69 does not apply. *R. v. Wood* deals with the circumstances in which the contents of a computer printout are to be regarded as real rather than hearsay evidence. It naturally does not touch upon the requirements of s. 69 as the 1984 Act had not yet been enacted. In *Sophocleous v. Ringer* the accused was charged with driving after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit.
- h Evidence was given against him by an analyst who had analysed a specimen of his blood through a technology known as gas chromatography for which a computer is used. She was permitted to refresh her memory by looking at the graph produced by the computer during the course of her work. The graph was not put in evidence by the prosecution nor did the defence
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require it to be exhibited. As the graph had not been put in evidence the court rightly pointed out that s. 69 had no application on the facts of that case. I would add that if the graph had been made an exhibit in that case, the analyst would have been well qualified to give the necessary evidence under s. 69 (as will appear from later passages in my speech).

In a later passage of the judgment the Court said:

In the courts below it was assumed by all concerned that s. 69 constitutes a self-contained code governing the admissibility of computer records in criminal proceedings. Undoubtedly, that is a legislative technique which Parliament could have adopted. The question is whether Parliament did adopt it.

The Court then gave as its reason for confining the operation of s. 69 to cases falling within s. 68 the fact that in *Reg. v. Ewing* [1983] QB. 1039 a computer printout of an appellant's bank account was held admissible under s. 1 of the Criminal Evidence Act 1965 which was the forerunner of s. 68 of the Act of 1984 from which the Court drew the inference that Parliament must therefore have intended s. 69 to apply only to computer documents falling within the meaning of s. 68. I cannot accept this reasoning. When *R. v. Ewing* was decided the safeguards later introduced by s. 69 had not yet been enacted and I see no reason to suppose that because of the decision in *R. v. Ewing* Parliament intended the language of s. 69 which is in general terms to be read in a restricted sense. It is surely every bit as important that a document produced by a computer and tendered as proof of guilt should be reliable whether or not it contains hearsay. In the case of *R. v. Spiby* the accused was charged with smuggling drugs into this country. As a part of the proof of his guilt the prosecution wished to show he was in touch with an accomplice in France. They invited the jury to draw this inference from a computer printout that recorded a number of telephone calls made from a hotel in Cherbourg at which the accomplice was staying to the accused's home in England. The computer did not record the contents of the conversations but it did show the date, the time, the number of the hotel room from which the call was made, the number to which the call was made in England; not, the duration and the cost. It seems to me as important to have an assurance that the computer was recording

a this information accurately as it would be if the computer had also recorded the conversation. The important link in the chain of evidence was not what these men said to each other but the fact that they were in constant touch with one another and for this the prosecution was relying solely on the reliability of the computer record. In such circumstances evidence to satisfy s. 69 is required and insofar as *Spiby* holds to the contrary it should not be followed, furthermore affirmative evidence is required and it is not sufficient to rely on the presumption expressed in the Latin phrase *praesumuntur omnia rite esse acta*. In fact there was satisfactory evidence given by the sub-manager of the hotel who was familiar with the operation of the computer and could speak to its reliability.

I therefore approach this question upon the basis that if the prosecution wish to rely upon a document produced by a computer they must comply with s. 69 in all cases.

The principal argument for the appellant starts with the proposition that the store detective was not "a person occupying a responsible position in relation to the operation of the computer" within the meaning of paragraph 8(d) of Schedule 3 and therefore was not qualified to sign a certificate for the purpose of providing proof of the matters contained in s. 69(1). This I accept. Although the store detective understood the operation of the computer and could speak of its reliability she had no responsibility for its operation.

I cannot however accept the next step in the appellant's argument which is that oral evidence is only acceptable if given by a person who is qualified to sign the certificate. The appellant does not go so far as to submit that evidence must be given by a computer expert but insists that it must be someone who has responsibility for the operation of the computer; either the operator or someone with managerial responsibility for the operation of the computer.

Proof that the computer is reliable can be provided in two ways. Either by calling oral evidence or by tendering a written certificate in accordance with the terms of paragraph 8 of Schedule 3, subject to the power of the Judge to require oral evidence. It is understandable that if a certificate is to be relied upon it should show on its face that it is signed by a person

who from their job description can confidently be expected to be in a position to give reliable evidence about the operation of the computer. This enables the defendant to decide whether to accept the certificate at its face value or to ask the Judge to require oral evidence which can be challenged in cross-examination. A defendant seeing a certificate signed by a store detective would not necessarily assume that such a person was familiar with the operation of the computer or had any responsibility for it and might well challenge the certificate. It does not however follow that the store detective cannot in fact give evidence that shows she is fully familiar with the operation of the store's computer and can speak to its reliability.

The appellant's argument requires one to read into s. 69(1) after the words "unless it is shown" the following words lifted from paragraph 8 of Schedule 3 "by [the oral evidence of] a person occupying a responsible position in relation to the operation of the computer".

These words do not appear in the section. They are, for the reasons I have given, contained in Schedule 3 as a necessary qualification to sign a certificate but I can see no reason to read them into s. 69(1) when oral evidence will be open to challenge by cross-examination.

Documents produced by computers are an increasingly common feature of all business and more and more people are becoming familiar with their uses and operation. Computers vary immensely in their complexity and in the operations they perform. The nature of the evidence to discharge the burden of showing that there has been no improper use of the computer and that it was operating properly will inevitably vary from case to case. The evidence must be tailored to suit the needs of the case. I suspect that it will very rarely be necessary to call an expert and that in the vast majority of cases it will be possible to discharge the burden by calling a witness who is familiar with the operation of the computer in the sense of knowing what the computer is required to do and who can say that it is doing it properly.

The computer in this case was of the simplest kind printing limited basic information on each till roll. The store detective was able to describe how the tills operated, what the computer did, that there had been no trouble with the computer and how she had also examined all the till rolls which showed no evidence of

a malfunction either by the tills or the central computer.

In these circumstances I agree with the Court of Appeal that she was fully qualified to give the evidence required by s. 69 and that in the light of her evidence the till rolls were properly admitted as part of the prosecution case.

b I therefore answer the certified question by saying that s. 69(1) of the Police and Criminal Evidence Act 1984 can be satisfied by the oral evidence of a person familiar with the operation of the computer who can give evidence of its reliability and such a person need not be a computer expert.

For these reasons I would dismiss this appeal.

Lord Emslie

My Lords,

d I have had the advantage of reading in draft the speech of my noble and learned friend Lord Griffiths. I entirely agree with him and for the reasons which he gives I, too, would dismiss this appeal.

Lord Roskill

e My Lords,

I have had the advantage of reading in draft the speech of my noble and learned friend Lord Griffiths. I agree with him and for the reasons which he gives I, too, would dismiss this appeal.

f **Lord Ackner**

My Lords,

I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Griffiths.

g I agree with it and, for the reasons given by my noble and learned friend, I, too, would answer the certified question in the way that he has done and would dismiss the appeal.

Lord Lowry

h My Lords,

I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Griffiths.

i I agree with it and, for the reasons given by my noble and learned friend, I, too, would answer the certified question in the way that he has done and would dismiss the appeal.